

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3452 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

FORGE AND FORGE LTD.

Versus

UNION OF INDIA

Appearance:

M/S TRIVEDI & GUPTA for Petitioners
MR JAYANT PATEL for Respondents

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE C.K.BUCH

Date of decision: 09/08/1999

ORAL JUDGEMENT

Rule. Mr. Jayant Patel appears and waives service of Rule on behalf of the respondents. In the facts and circumstances of the case, the matter is taken up for final hearing today.

This petition is filed against the order passed on April 21, 1999 in Stay Order No. 420 of 1999 .

Being aggrieved by the order in original, an appeal is filed by the petitioners. Said appeal is pending before the Commissioner (Appeals), Central Excise and Customs, Ahmedabad. Along with appeal, an application for stay was also submitted. On April 21, 1999, an order was passed in which it was stated that the appellate authority did not think it fit to grant full waiver of duty and the appellant was directed to deposit an amount of Rs. 8,10,000/- as predeposit under Section 35 F of the Central Excise Act, 1944.

Being aggrieved by the said order, the present petition is filed. On May 6, 1999, Notice was issued by this Court and it was made returnable on May 11, 1999.

On July 26, 1999, when the matter was called out, draft amendment was submitted by the petitioners wherein it was stated that the authorities had seized the goods and that they were to hold auction sale. In the light of the amendment, we granted the said amendment and directed the authorities not to auction the seized goods till returnable date which was fixed on August 6, 1999.

Today, when the matter was called out, Mr. Gupta for the petitioners stated that in fact, an amount of Rs. 8,10,000/- which was directed as per the order impugned in the petition, is already deposited in R.G. 23-Part II register. Mr. Gupta further stated that this is one of the permissible modes of making predeposit payment. If this is so, Mr. Gupta contended that by approaching this Court, the petitioner has suffered doubly, inasmuch as the said amount was paid in permissible mode as per the direction in the impugned order. Since the petitioner had approached this Court, even seizure order was passed and the goods were already seized which were to be auctioned but the Court granted ad-interim relief. It was, therefore, submitted that the petitioner should not be a loser on both the counts.

Mr. Jayant Patel, on the other hand, submitted that he has no instructions so far as payment of Rs. 8, 10,000/- as contended by Mr. Gupta for the petitioner is concerned.

In the facts and circumstances of the case, in our opinion, ends of justice will be met if, without expressing any opinion on merits, we direct the

authorities to lift the seizure and to release the goods provided payment of predeposit amount of Rs. 8,10,000/has been made in accordance with law. We may,however, clarify that if such payment is made in accordance with law, the authorities will take into account such payment even if such payment was not made within the stipulated period , as alleged in the stay order.

For the foregoing reasons, the petition deserves to be partly allowed. It is accordingly partly allowed. If payment is made of Rs. 8,10,000/- as mentioned in the order impugned in the petition, the authorities will lift the seizure and release the goods forthwith .It is stated that appeal is pending and is also fixed for final hearing. The authorities will dispose of the appeal as expeditiously as possible . Petition is partly allowed. Rule made absolute to the aforesaid extent. No order as to costs.

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parekh